

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2569 OF 2017

ORDER:

This civil revision petition is filed challenging the order passed in I.A.No.118 of 2017 in O.S.No.2178 of 2012 passed by the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, dated 02.03.2017, dismissing the application filed under Order VI rule 17 r/w 151 C.P.C and Rule 28 of Civil Rules of Practices (for short 'Rules')

The petitioner filed I.A.No.516 of 2016 under Order I Rule 10(2) r/w 151 C.P.C to implead defendants 2 to 4 and the same was allowed on 02.09.2016 as the defendants sold the property during pendency of the suit. Thereafter, no consequential amendment was made to the plaint as required under Rule 28 of Civil Rules of Practice. Therefore, the I.A.No.118 of 2017 is filed seeking leave of the Court to amend the plaint incorporating several paragraphs employed, both in the affidavit and the petition, including cause of action in the suit.

The respondent filed counter, denying material allegations disputing the proposed amendments, contended that the petitioner cannot be permitted to amend the plaint, as it is belated and at the present stage, the petition is not maintainable. Moreover, in the absence of any explanation for the delay, the proposed amendment cannot be permitted at this stage, as the suit reached for argument stage, after completion of entire trial.

The Trial Court upon hearing argument of both the counsel, dismissed I.A.No.118 of 2017 on the ground that it is belated and

the petitioner failed to satisfy the ingredients of Order VI Rule 17 C.P.C. Aggrieved by the order passed by the Trial Court in I.A.No.118 of 2017 dated 02.03.2017, the present revision is filed raising several contentions, mainly on the ground that the order of the Trial Court is contrary to the law and the Court did not appreciate the specific ground assigned by the petitioner for filing the petition and further contended that when a petition in I.A.No.118 of 2017 has been filed by the petitioner, a petition under Order VI Rule 17 C.P.C also must be permitted. But the Trial Court did not take into consideration the facts and circumstances under which the petitions are filed and committed serious error in dismissing the petition.

During hearing, learned counsel for the petitioner Sri Sharad Sanghi would contend that as I.A.No.516 of 2015 was filed under Order I Rule 10(2) C.P.C, and when allowed the petitioner is entitled to file an application under Order VI Rule 17 C.P.C r/w Rule 28 of Civil Rules of Practice, for the mistake of advocate, the party should not suffer. The bar under Order VI Rule 17 C.P.C as amended by Act 22 of 2002 has no application to the consequential amendment, thereby, the Court cannot dismiss the petition in view of the bar under the proviso to Order VI Rule 17 C.P.C and requested this Court to allow the revision, setting aside the order passed by the Trial Court in I.A.no.118 of 2017 in O.S.No.2178 of 2012 dated 02.03.2017.

Whereas, learned counsel for the respondents Sri Nazir Ahmad Kham supported the order passed by the Trial Court, mainly contending that, when the suit is posted for argument after

completion of recording of evidence and marking of documents, leave cannot be granted to amend the pleadings, in view of proviso to Order VI Rule 17 C.P.C, unless the petitioner explains the reasons for his failure to file a petition despite exercise of due diligence and therefore, the Court can exercise power under Article 227 of the Constitution of India and prayed for dismissal of the petition.

Undisputedly, the petitioner filed suit for recovery of delivery of possession, perpetual injunction and other consequential reliefs in O.S.No.2178 of 2012. But, the respondents in the written statement raised additional pleas contending that the property was already sold prior to filing of the suit. Therefore, in view of additional plea, the petitioner filed the petition in I.A.No.516 of 2016 under Order I Rule 10(2) C.P.C to implead the respondents 2 to 4 and the same was allowed on 02.09.2016. But, later, I.A.No.118 of 2017 is filed in the year 2017 seeking leave of this Court to amend the plaint under Order VI Rule 17 C.P.C. Undisputedly, petition filed under Order I Rule 10(2) C.P.C. was allowed, but Rule 28 of the Rules, says that an application for amendment made under Order I, Rule 10, Order VI Rule 17 Order XXII C.P.C shall also contain a prayer for all consequential amendments. It further says that the Presiding officer shall reject the application if it is not in accordance with these rules. Undisputedly, the petition filed under Order VI Rule 17 C.P.C did not contain any consequential amendment, but the petitioner filed I.A.No.118 of 2017 under Order I Rule 10(2) C.P.C r/w Rule 28 of Civil Rules of Practice disclosed proposed amendment. Even a

petition under Order VI Rule 17 C.P.C must also contain consequential amendment as per the aforesaid rule. So, this petition is an independent application, though it is consequent of impleading respondents 2 to 4 in I.A.No.516 of 2016. The Trial Court instead of rejecting the application filed under Order I Rule 10(2) C.P.C in I.A.No.516 of 2016 allowed the application without advertng to Rule 28 of Civil Rules of Practice. But, the said order in I.A.No.516 of 2016 is not under challenge before this Court, attained finality. Moreover, the trial in the suit was completed and it is at the stage of advancing argument by both counsel. In such case, the proviso to Order VI Rule 17 C.P.C by Act 22 of 2002 would not come in the way of ordering such applications, unless the petitioner explains that despite exercise of due diligence, he could not bring to the notice of this Court such facts by amendment of the plaint. The affidavit is totally silent as to exercise of due diligence, as required under the proviso to Order VI Rule 17 C.P.C to grant leave to amend the plaint. Further, it appears from the record that the counsel filed a petition inadvertently and the Court allowed the application under Order I Rule 10(2) C.P.C without advertng to the purport of Rule 28 of Civil Rules of Practice. When once, the trial is commenced, the amendment cannot be permitted, except on explaining the reason that despite exercise of due diligence, the petitioner could not bring to the notice of this Court, the few facts.

In **Kailash v. Nankhu**¹ the Apex Court held as follows.

“At this point the question arises : When does the trial of an election petition commence or what is the meaning to be assigned to the word 'trial' in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and upto the date of decision therein are included within the meaning of the word 'trial'”

Similarly in **Ajendraprasadji N. Pande and Anr.v. Swami Keshavprakeshdasji N. and Ors**², the Supreme Court reiterated the principle laid down by in **Kailash**¹ case.

But, the Apex Court took a different view in **Baldev Singh v. Manohar Singh**³. However, **Kailash**¹ case is decided by Full Bench of Supreme Court and therefore, it is binding on this Court.

If the principle laid down in **Kailash**¹ case is applied to the present facts of the case, the petitioner is not entitled to seek leave of the Court to amend the plaint when the suit is posted for arguments. It appears from the record that the Advocate appeared before the Trial court is not serious about prosecuting the proceedings in accordance with law and did not incorporate the consequential amendment as required under Rule 28 of Civil Rules of Practice. But the Trial Court in a casual manner allowed the said application instead of rejecting it by following Rule 28 of Civil

¹ (2005) 4 SCC 480

² (2006) 12 SCC 1

³ LAWS (SC)-2006-8-5

Rules of Practice. The present petition filed under Order VI Rule 17 C.P.C the suit is posted for arguments. But, in view of the judgment of the Apex Court in **Kailash**¹ case referred supra, leave cannot be granted to amend the plaint at this stage when the suit is posted for arguments, since the trial is already commenced and the petition is silent as to exercise of due diligence even to exercise power by this Court to grant leave, in view of the bar under proviso to Order VI Rule 17 C.P.C.

In **Rameshkumar Agarwal v. Rajmala Exports Private Limited and others**⁴, the Apex Court, relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**⁵ to decide the scope of proviso to Order VI Rule 17 of C.P.C, held in paragraph nos.10 and 11 as follows:

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the cases;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are illustrative and not exhaustive.”*

The guidelines mentioned above are only illustrative and not exhaustive while deciding an application under Order VI Rule 17 C.P.C, the Court has to take into consideration the guidelines

⁴ 2012 (4) AL 1 (SC)

⁵ 2009 (8) SCJ 401

referred supra and decide an application. These guidelines are only subject to proviso to Order VI Rule 17 C.P.C In such situation, the petitioner is not entitled to claim leave to amend the plaint.

One of the contentions raised by Sri Sharad Sanghi, learned counsel for the petitioner is that the bar under proviso to Order VI Rule 17 C.P.C has no application to consequential amendment. This is a strange argument advanced by the learned counsel for the petitioner before this Court, having filed petition under Order VI Rule 17 C.P.C and Rule 28 of Civil Rules of Practice, such contention cannot be accepted, as there is no separate provision for consequential amendment under Civil Procedure Code.

Order VI Rule 17 C.P.C deals with amendments, including consequential amendments. But, Rule 28 of Civil Rules of Practice mandates that an application for amendment made under Order I, Rule 103, Order VI Rule 17 Order XXII C.P.C shall also contain a prayer for all consequential amendments. This rule is incorporated only to avoid multiple applications after amending Civil Rules of Practice. Prior to amendment, the practice was to file two applications one for impleadment and the other for consequential amendment. After amendment of rules, such procedure is taken away and in view of the rule, the contention of the petitioner that the bar under proviso to Order VI Rule 17 C.P.C is not applicable is without any substance.

Viewed from any angle, the Trial Court discussed the effect of proviso to Order VI Rule 17 C.P.C and rightly concluded that leave cannot be granted at this stage when the suit is posted for argument after recording entire evidence. Therefore, the order

passed by the Trial Court do not call for interference by this court by exercising power under Article 227 of the Constitution of India. Consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:26.07.2017

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